

Calendar No. 167

106TH CONGRESS
1ST Session

S. 768

A BILL

To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

JUNE 24, 1999

Reported with an amendment

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To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 1999

Mr. SESSIONS (for himself and Mr. DEWINE) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Military and
3 Extraterritorial Jurisdiction Act of 1999”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) Civilian employees of the Department of
7 Defense, and civilian employees of Department of
8 Defense contractors, provide critical support to the
9 Armed Forces of the United States that are de-
10 ployed during a contingency operation.

11 (2) Misconduct by such persons undermines
12 good order and discipline in the Armed Forces, and
13 jeopardizes the mission of the contingency operation.

14 (3) Military commanders need the legal tools to
15 address adequately misconduct by civilians serving
16 with Armed Forces during a contingency operation.

17 (4) In its present state, military law does not
18 permit military commanders to address adequately
19 misconduct by civilians serving with Armed Forces,
20 except in time of a congressionally declared war.

21 (5) To address this need, the Uniform Code of
22 Military Justice should be amended to provide for
23 court-martial jurisdiction over civilians serving with
24 Armed Forces in places designated by the Secretary
25 of Defense during a “contingency operation” ex-

1 pressly designated as such by the Secretary of De-
2 fense.

3 (6) This limited extension of court-martial ju-
4 risdiction over civilians is dictated by military neces-
5 sity, is within the constitutional powers of Congress
6 to make rules for the government of the Armed
7 Forces, and, therefore, is consistent with the Con-
8 stitution of the United States and United States
9 public policy.

10 (7) Many thousand civilian employees of the
11 Department of Defense, civilian employees of De-
12 partment of Defense contractors, and civilian de-
13 pendents accompany the Armed Forces to installa-
14 tions in foreign countries.

15 (8) Misconduct among such civilians has been a
16 longstanding problem for military commanders and
17 other United States officials in foreign countries,
18 and threatens United States citizens, United States
19 property, and United States relations with host
20 countries.

21 (9) Federal criminal law does not apply to
22 many offenses committed outside of the United
23 States by such civilians and, because host countries
24 often do not prosecute such offenses, serious crimes
25 often go unpunished and, to address this jurisdic-

1 tional gap, Federal law should be amended to punish
 2 serious offenses committed by such civilians outside
 3 the United States, to the same extent as if those of-
 4 fenses were committed within the special maritime
 5 and territorial jurisdiction of the United States.

6 ~~(10)~~ Federal law does not apply to many crimes
 7 committed outside the United States by members of
 8 the Armed Forces who separate from the Armed
 9 Forces before they can be identified, thus escaping
 10 court martial jurisdiction and, to address this juris-
 11 dictional gap, Federal law should be amended to
 12 punish serious offenses committed by such persons
 13 outside the United States, to the same extent as if
 14 those offenses were committed within the special
 15 maritime and territorial jurisdiction of the United
 16 States.

17 **SEC. 3. COURT-MARTIAL JURISDICTION.**

18 ~~(a) JURISDICTION DURING CONTINGENCY OPER-~~
 19 ~~ATIONS.—~~Section 802(a) of title 10, United States Code
 20 (article 2(a) of the Uniform Code of Military Justice), is
 21 amended by inserting after paragraph ~~(12)~~ the following:

22 ~~“(13)~~ To the extent not covered by paragraphs
 23 ~~(10)~~ and ~~(11)~~, persons not members of the armed
 24 forces who, in support of an operation designated as
 25 a contingency operation as described in section

1 ~~101(a)(13)(A)~~ of this title, are serving with and ac-
 2 companying an armed force in a place or places out-
 3 side the United States specified by the Secretary of
 4 Defense, as follows:

5 “(A) Employees of the Department of De-
 6 fense.

7 “(B) Employees of any Department of De-
 8 fense contractor who are so serving in connec-
 9 tion with the performance of a Department of
 10 Defense contract.”.

11 (b) **EFFECTIVE DATE.**—The amendment made by
 12 subsection (a) shall take effect on the date of the enact-
 13 ment of this Act and apply with respect to acts or omis-
 14 sions occurring on or after that date.

15 **SEC. 4. FEDERAL JURISDICTION.**

16 (a) **CRIMINAL OFFENSES COMMITTED OUTSIDE THE**
 17 **UNITED STATES.**—Title 18, United States Code, is
 18 amended by inserting after chapter 211 the following:

19 **“CHAPTER 212—CRIMINAL OFFENSES**
 20 **COMMITTED OUTSIDE THE UNITED**
 21 **STATES**

“Sec.

“3261. Criminal offenses committed by persons formerly serving with, or pres-
 ently employed by or accompanying, the Armed Forces outside
 the United States.

“3262. Delivery to authorities of foreign countries.

“3263. Regulations.

“3264. Definitions.

1 **“§ 3261. Criminal offenses committed by persons for-**
 2 **merly serving with, or presently em-**
 3 **ployed by or accompanying, the Armed**
 4 **Forces outside the United States**

5 “(a) IN GENERAL.—Whoever, while serving with, em-
 6 ployed by, or accompanying the Armed Forces outside of
 7 the United States, engages in conduct that would con-
 8 stitute an offense punishable by imprisonment for more
 9 than 1 year if the conduct had been engaged in within
 10 the special maritime and territorial jurisdiction of the
 11 United States, shall be guilty of a like offense and subject
 12 to a like punishment.

13 “(b) CONCURRENT JURISDICTION.—Nothing in this
 14 chapter may be construed to deprive a court-martial, mili-
 15 tary commission, provost court, or other military tribunal
 16 of concurrent jurisdiction with respect to offenders or of-
 17 fenses that by statute or by the law of war may be tried
 18 by a court-martial, military commission, provost court, or
 19 other military tribunal.

20 “(c) ACTION BY FOREIGN GOVERNMENT.—No pros-
 21 ecution may be commenced against a person under this
 22 section if a foreign government, in accordance with juris-
 23 diction recognized by the United States, has prosecuted
 24 or is prosecuting such person for the conduct constituting
 25 such offense, except upon the approval of the Attorney
 26 General or the Deputy Attorney General (or a person act-

1 ing in either such capacity), which function of approval
 2 shall not be delegated.

3 ~~“(d) ARRESTS.—~~

4 ~~“(1) LAW ENFORCEMENT PERSONNEL.—~~The
 5 Secretary of Defense may designate and authorize
 6 any person serving in a law enforcement position in
 7 the Department of Defense to arrest outside of the
 8 United States any person described in subsection (a)
 9 if there is probable cause to believe that such person
 10 engaged in conduct that constitutes a criminal of-
 11 fense under subsection (a).

12 ~~“(2) RELEASE TO CIVILIAN LAW ENFORCE-~~
 13 ~~MENT.—~~A person arrested under paragraph (1)
 14 shall be released to the custody of civilian law en-
 15 forcement authorities of the United States for re-
 16 moval to the United States for judicial proceedings
 17 in relation to conduct referred to in such paragraph
 18 unless—

19 ~~“(A) such person is delivered to authorities~~
 20 ~~of a foreign country under section 3262; or~~

21 ~~“(B) such person has had charges brought~~
 22 ~~against him or her under chapter 47 of title 10~~
 23 ~~for such conduct.~~

24 ~~“(3) JUSTIFIABLE DELAY.—~~The arrest of a person
 25 outside the United States by a person designated under

1 paragraph (1), and the removal of the arrested person to
 2 the United States under paragraph (2), are extraordinary
 3 circumstances justifying delay in bringing the arrested
 4 person before a magistrate as required by the fourth
 5 amendment to the United States Constitution and the
 6 Federal Rules of Criminal Procedure.

7 **“§ 3262. Delivery to authorities of foreign countries**

8 “(a) IN GENERAL.—Any person designated and au-
 9 thorized under section 3261(d) may deliver a person de-
 10 scribed in section 3261(a) to the appropriate authorities
 11 of a foreign country in which such person is alleged to
 12 have engaged in conduct described in section 3261(a) of
 13 this section if—

14 “(1) the appropriate authorities of that country
 15 request the delivery of the person to such country
 16 for trial for such conduct as an offense under the
 17 laws of that country; and

18 “(2) the delivery of such person to that country
 19 is authorized by a treaty or other international
 20 agreement to which the United States is a party.

21 “(b) DETERMINATION BY THE SECRETARY.—The
 22 Secretary of Defense shall determine which officials of a
 23 foreign country constitute appropriate authorities for pur-
 24 poses of this section.

1 **“§ 3263. Regulations**

2 “‘The Secretary of Defense shall issue regulations
3 governing the apprehension, detention, and removal of
4 persons under this chapter. Such regulations shall be uni-
5 form throughout the Department of Defense.

6 **“§ 3264. Definitions**

7 “In this chapter—

8 “(1) a person is ‘accompanying the Armed
9 Forces outside of the United States’ if the person—

10 “(A) is a dependent of—

11 “(i) a member of the Armed Forces;

12 “(ii) a civilian employee of a military
13 department or of the Department of De-
14 fense; or

15 “(iii) a Department of Defense con-
16 tractor, or is a dependent of an employee
17 of a Department of Defense contractor;

18 “(B) is residing with such member, civilian
19 employee, contractor, or contractor employee
20 outside the United States; and

21 “(C) is not a national of or ordinarily resi-
22 dent in the host nation;

23 “(2) the term ‘Armed Forces’ has the same
24 meaning as in section 101(a)(4) of title 10; and

25 “(3) a person is ‘employed by the Armed
26 Forces outside of the United States’ if the person—

“(A) is employed as a civilian employee of the Department of Defense, as a Department of Defense contractor, or as an employee of a Department of Defense contractor;

“(B) is present or residing outside of the United States in connection with such employment; and

“(C) is not a national of or ordinarily resident in the host nation.”

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part II of title 18, United States Code, is amended by inserting after the item relating to chapter 211 the following:

“212. Criminal Offenses Committed Outside the United States 3621”.

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “Military and*
16 *Extraterritorial Jurisdiction Act of 1999”.*

17 **SEC. 2. FINDINGS.**

18 Congress makes the following findings:

(1) *Civilian employees of the Department of Defense, and civilian employees of Department of Defense contractors, provide critical support to the Armed Forces of the United States that are deployed during a contingency operation.*

1 (2) *Misconduct by such persons undermines good*
2 *order and discipline in the Armed Forces, and jeop-*
3 *ardizes the mission of the contingency operation.*

4 (3) *Military commanders need the legal tools to*
5 *address adequately misconduct by civilians serving*
6 *with Armed Forces during a contingency operation.*

7 (4) *In its present state, military law does not*
8 *permit military commanders to address adequately*
9 *misconduct by civilians serving with Armed Forces,*
10 *except in time of a congressionally declared war.*

11 (5) *To address this need, the Uniform Code of*
12 *Military Justice should be amended to provide for*
13 *court-martial jurisdiction over civilians serving with*
14 *Armed Forces in places designated by the Secretary*
15 *of Defense during a “contingency operation” expressly*
16 *designated as such by the Secretary of Defense.*

17 (6) *This limited extension of court-martial juris-*
18 *isdiction over civilians is dictated by military neces-*
19 *sity, is within the constitutional powers of Congress*
20 *to make rules for the government of the Armed Forces,*
21 *and, therefore, is consistent with the Constitution of*
22 *the United States and United States public policy.*

23 (7) *Many thousand civilian employees of the De-*
24 *partment of Defense, civilian employees of Depart-*
25 *ment of Defense contractors, and civilian dependents*

1 *accompany the Armed Forces to installations in for-*
2 *ign countries.*

3 *(8) Misconduct among such civilians has been a*
4 *longstanding problem for military commanders and*
5 *other United States officials in foreign countries, and*
6 *threatens United States citizens, United States prop-*
7 *erty, and United States relations with host countries.*

8 *(9) Federal criminal law does not apply to*
9 *many offenses committed outside of the United States*
10 *by such civilians and, because host countries often do*
11 *not prosecute such offenses, serious crimes often go*
12 *unpunished and, to address this jurisdictional gap,*
13 *Federal law should be amended to punish serious of-*
14 *fenses committed by such civilians outside the United*
15 *States, to the same extent as if those offenses were*
16 *committed within the special maritime and terri-*
17 *torial jurisdiction of the United States.*

18 *(10) Federal law does not apply to many crimes*
19 *committed outside the United States by members of*
20 *the Armed Forces who separate from the Armed*
21 *Forces before they can be identified, thus escaping*
22 *court-martial jurisdiction and, to address this juris-*
23 *isdictional gap, Federal law should be amended to pun-*
24 *ish serious offenses committed by such persons outside*
25 *the United States, to the same extent as if those of-*

1 *fenses were committed within the special maritime*
 2 *and territorial jurisdiction of the United States.*

3 **SEC. 3. COURT-MARTIAL JURISDICTION.**

4 (a) *JURISDICTION DURING CONTINGENCY OPER-*
 5 *ATIONS.—Section 802(a) of title 10, United States Code*
 6 *(article 2(a) of the Uniform Code of Military Justice), is*
 7 *amended by inserting after paragraph (12) the following:*

8 *“(13) To the extent not covered by paragraphs*
 9 *(10) and (11), persons not members of the armed*
 10 *forces who, in support of a contingency operation de-*
 11 *scribed in section 101(a)(13)(B) of this title, are serv-*
 12 *ing with and accompanying an armed force in a*
 13 *place or places outside the United States specified by*
 14 *the Secretary of Defense, as follows:*

15 *“(A) Employees of the Department of De-*
 16 *fense.*

17 *“(B) Employees of any Department of De-*
 18 *fense contractor who are so serving in connection*
 19 *with the performance of a Department of Defense*
 20 *contract.”.*

21 (b) *EFFECTIVE DATE.—The amendment made by sub-*
 22 *section (a) shall take effect on the date of the enactment*
 23 *of this Act and apply with respect to acts or omissions oc-*
 24 *curring on or after that date.*

1 **SEC. 4. FEDERAL JURISDICTION.**

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 3 *UNITED STATES.—Title 18, United States Code, is amend-*
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“Sec.

“3261. *Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the Armed Forces outside the United States.*

“3262. *Delivery to authorities of foreign countries.*

“3263. *Regulations.*

“3264. *Definitions.*

8 **“§3261. *Criminal offenses committed by persons for-***
 9 ***merly serving with, or presently employed***
 10 ***by or accompanying, the Armed Forces***
 11 ***outside the United States***

12 “(a) *IN GENERAL.—Whoever, while serving with, em-*
 13 *ployed by, or accompanying the Armed Forces outside of*
 14 *the United States, engages in conduct that would constitute*
 15 *an offense punishable by imprisonment for more than 1*
 16 *year if the conduct had been engaged in within the special*
 17 *maritime and territorial jurisdiction of the United States,*
 18 *shall be guilty of a like offense and subject to a like punish-*
 19 *ment.*

20 “(b) *CONCURRENT JURISDICTION.—Nothing in this*
 21 *chapter may be construed to deprive a court-martial, mili-*
 22 *tary commission, provost court, or other military tribunal*

1 *of concurrent jurisdiction with respect to offenders or of-*
 2 *fenses that by statute or by the law of war may be tried*
 3 *by a court-martial, military commission, provost court, or*
 4 *other military tribunal.*

5 “(c) *ACTION BY FOREIGN GOVERNMENT.*—No prosecu-
 6 *tion may be commenced against a person under this section*
 7 *if a foreign government, in accordance with jurisdiction*
 8 *recognized by the United States, has prosecuted or is pros-*
 9 *ecuting such person for the conduct constituting such of-*
 10 *fense, except upon the approval of the Attorney General or*
 11 *the Deputy Attorney General (or a person acting in either*
 12 *such capacity), which function of approval shall not be dele-*
 13 *gated.*

14 “(d) *ARRESTS.*—

15 “(1) *LAW ENFORCEMENT PERSONNEL.*—The Sec-
 16 *retary of Defense may designate and authorize any*
 17 *person serving in a law enforcement position in the*
 18 *Department of Defense to arrest outside of the United*
 19 *States any person described in subsection (a) if there*
 20 *is probable cause to believe that such person engaged*
 21 *in conduct that constitutes a criminal offense under*
 22 *subsection (a).*

23 “(2) *RELEASE TO CIVILIAN LAW ENFORCE-*
 24 *MENT.*—A person arrested under paragraph (1) shall
 25 *be released to the custody of civilian law enforcement*

1 *authorities of the United States for removal to the*
 2 *United States for judicial proceedings in relation to*
 3 *conduct referred to in such paragraph unless—*

4 *“(A) such person is delivered to authorities*
 5 *of a foreign country under section 3262; or*

6 *“(B) such person has had charges brought*
 7 *against him or her under chapter 47 of title 10*
 8 *for such conduct.*

9 **“§ 3262. Delivery to authorities of foreign countries**

10 *“(a) IN GENERAL.—Any person designated and au-*
 11 *thorized under section 3261(d) may deliver a person de-*
 12 *scribed in section 3261(a) to the appropriate authorities of*
 13 *a foreign country in which such person is alleged to have*
 14 *engaged in conduct described in section 3261(a) of this sec-*
 15 *tion if—*

16 *“(1) the appropriate authorities of that country*
 17 *request the delivery of the person to such country for*
 18 *trial for such conduct as an offense under the laws*
 19 *of that country; and*

20 *“(2) the delivery of such person to that country*
 21 *is authorized by a treaty or other international agree-*
 22 *ment to which the United States is a party.*

23 *“(b) DETERMINATION BY THE SECRETARY.—The Sec-*
 24 *retary of Defense, in consultation with the Secretary of*
 25 *State, shall determine which officials of a foreign country*

1 *constitute appropriate authorities for purposes of this sec-*
 2 *tion.*

3 **“§ 3263. Regulations**

4 *“The Secretary of Defense shall issue regulations gov-*
 5 *erning the apprehension, detention, and removal of persons*
 6 *under this chapter. Such regulations shall be uniform*
 7 *throughout the Department of Defense.*

8 **“§ 3264. Definitions**

9 *“In this chapter—*

10 *“(1) a person is ‘accompanying the Armed*
 11 *Forces outside of the United States’ if the person—*

12 *“(A) is a dependent of—*

13 *“(i) a member of the Armed Forces;*

14 *“(ii) a civilian employee of a military*
 15 *department or of the Department of Defense;*

16 *or*

17 *“(iii) a Department of Defense con-*
 18 *tractor or an employee of a Department of*
 19 *Defense contractor;*

20 *“(B) is residing with such member, civilian*
 21 *employee, contractor, or contractor employee out-*
 22 *side the United States; and*

23 *“(C) is not a national of or ordinarily resi-*
 24 *dent in the host nation;*

1 “(2) the term ‘Armed Forces’ has the same mean-
2 ing as in section 101(a)(4) of title 10; and

3 “(3) a person is ‘employed by the Armed Forces
4 outside of the United States’ if the person—

5 “(A) is employed as a civilian employee of
6 the Department of Defense, as a Department of
7 Defense contractor, or as an employee of a De-
8 partment of Defense contractor;

9 “(B) is present or residing outside of the
10 United States in connection with such employ-
11 ment; and

12 “(C) is not a national of or ordinarily resi-
13 dent in the host nation.”.

14 (b) *CLERICAL AMENDMENT.*—The table of chapters at
15 the beginning of part II of title 18, United States Code,
16 is amended by inserting after the item relating to chapter
17 211 the following:

**“212. Criminal Offenses Committed Outside the United
 States 3621”.**